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EXAMINER

PHAN, THANH S

ART UNIT

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GROUP 2800

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/900,375
Filing Date: July 05, 2001
Appellant(s): SHTEYN, YEVGENIY EUGENE

MAILED

NOV 04 2004

GROUP 2800

**B M Ganz
For Appellant**

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/14/2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-13 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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6,033,316	Nixon	3-2000
6,477,117	Narayanswami et al.	11-2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

See the final office action.

(11) Response to Argument

Appellant's first assertion (page 4 of the brief) is that Hepp does not teach the claimed invention alone or in combination. Appellant then continues to state that character (15), corresponding to the graphical representation of the scheduled activity as recited in claim 1, is not located on the dial face as claimed (top of page 5 of the brief). Based on this, Appellant concludes that the rejection is improper.

The examiner does not agree. Hepp does not disclose character (15) formed on the dial face (3). Nevertheless, Hepp clearly renders obvious such a configuration. Hepp at column 5, lines 25-37, discloses that character (15) is a representation of a scheduled activity ("e.g., to remind of jobs to be done"), which depends on time. Character (15) is clearly formed on the face of the timepiece, but not on the dial face. Hepp shows objects (13) formed on the dial faces, which are related to the time ("typical of the season," column 5 at line 14). These representations, while time dependent, are not representative of scheduled activities, but their existence on the dial face evinces the conclusion that formation of any design on the dial face is a matter of obvious design choice. With Hepp disclosing character (15) as claimed on the face of the time piece, relocation of that character is merely a rearrangement of parts, which in no way affects

the operation of the device and is nothing more than a design choice of the maker. The inclusion of characters (13) on the dial face further support this conclusion. Therefore, examiner has concluded in the final rejection and maintains this conclusion here that Hepp renders obvious to one of ordinary skill the claimed invention.

Appellant's second assertion is that Hepp does not teach association of a scheduled activity with "time-of-day segments." Appellant further continues to set forth a geometric definition of segment. This too is not persuasive. The plain and ordinary meaning of "time of day segment," as well as the meaning it conveys to one of ordinary skill in the art, is a portion of the time of day. Character (15), as explicitly recited in column 5 as noted above, shows various activities to be done depending on the time, "to remind of jobs to be done . . . On the one hand he [the character] supplements the information which depends on time or location. Therefore, it must be associated with a particular time, if it's function is to note a task to be done at that time. When the character is associated with "a time," then it is necessarily associated with a time-of-day segment, because every time is a segment of the time of day. Appellant's specification has in no way afforded a special meaning to the time-of-day segment that restricts it to a particular length. Therefore, any time is a time-of-day segment (of a given length). Applicant's arguments limiting the segment to "arcs" of circles, top of page 7, are without any basis or support grounded in the disclosure.

Appellant then argues that the examiner related the scheduled activity "relative" to the

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time of day, and draws a distinction between this and associating the activity with the time-of-day. Examiner is confused by this argument. Clearly, if the activity is for a particular time as explicitly recited in column 5 of Hepp (noted above) and clearly if that activity is relative to a particular time; it must be, at the very least, *associated* with that time. Examiner believes that Hepp without a doubt discloses (and outright states in column 5) that character (15) is a graphical representation of a scheduled task that is associated with a particular time and time-of-day segment.

Appellant argues that the rejection is erroneous because it is based on improper legal principles (page 8 of the brief). Appellant then states that it is unclear what examiner has in mind by stating that changing one animated representation for another is a matter of obviousness. Examiner points out that, as noted in the final rejection and as clearly visible in figure 1 of Hepp, characters (13) are formed on the dial face.

Therefore, formation of character representations on the dial face is known and contemplated.

Appellant continues to state on page 9 that the reliance on *In re Japiske* is improper because it has been held in other situations that rearrangement of parts is not obvious. Examiner concludes that in *the instant case* rearrangement of part (15) on to the dial face would have been obvious to one of ordinary skill, especially in view of the existence of other characters (13) on the dial face, and *is* a mere design choice. Examiner holds that the factual inquiries of *Graham v. Deere* to ascertain the differences and resolve the level of ordinary skill have resulted in the fact-based

conclusion that one of ordinary skill would have found it obvious to locate character (15) on the dial face of the timepiece of Hepp. Outside of merely asserting that character (15) is not on the dial face and arguing that Hepp lack of association with a "time-of-day segment," Appellant has provided no reasons why this fact-based conclusion is erroneous.

On page 10, Appellant argues that there are no per se rules of obviousness. Examiner agrees that there are no such rules, and obviousness of the present invention is established on the Graham v. Deere criteria and not some per se rule. The examiner is asserting that the criteria for obviousness is being met, not that this is per se obvious.

At the bottom of page 10, Appellant argues that examiner is required to show motivation cited in the references to establish obviousness. Examiner disagrees. A careful reading of the requirements of Graham v. Deere reveal that the subject matter as a whole should have been obvious to one of ordinary skill and there is no requirement of explicit statements in a particular reference.

On page 11, Appellant asserts that relocation of character (15) to the dial face is problematic and undesirable. This assertion is without basis and contradicted by the presence of characters (13) on the dial face. Appellant continues to explain that it would not be desirable to display "Joe," the character (15) on the dial face. Examiner believes that this is piecemeal analysis of the teachings of Hepp. The character need not be "Joe!" Hepp states that one example of a character can be the farmer "Joe."

Further, Joe could be in the tree top picking apples. In that case, it would even be desirable to place Joe in the dial face. In short, the arguments about Joe's activities are not appropriate analysis of what Hepp's teachings, as a whole, convey to one of ordinary skill.

On page 12, Appellant argues that Hepp does not teach a "scheduled" activity, because scheduled implies an activity entered by a user. Appellant states that "Hepp only contemplates that character 15 may be used 'to remind of jobs to be done.'" Examiner notes that this argument is without merit. If there is a job to be done at a particular time of day, then it must be "scheduled" for that time. There is no such distinction that a job to be done is not a scheduled activity. If it were not scheduled, no reminder associated with a particular time to do the job would be necessary. Appellant states that the activities of Joe are not controlled by the user. There is no such requirement of "control" present in any of the claims. The activities of Joe are scheduled, because they are assigned to a particular time as stated in column 5 of Hepp. The activities are also user-defined, because the type of activity displayed depends on the type of user of the time piece. Even given Appellant's example of gardening in the spring, this activity is based on North American or some European users. For the sheep herders of Australia, spring is not the season to garden.

On pages 13-14, Appellant argues the rejections of claims 2-4, 6-7, 12-13 and claims 9-11. Nevertheless, Appellant does not raise any new unanswered issues. All of the alleged deficiencies of scheduling and lack of motivation to modify are addressed

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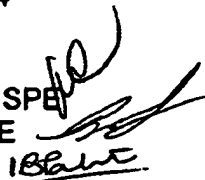
above.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Thanh Phan
October 26, 2004

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